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C O N F I D E N T I A L SECTION 01 OF 02 SANAA 001244

SIPDIS

E.O. 12958: DECL: 05/08/2015

TAGS: PHUM YM

SUBJECT: YEMEN GRAPPLES WITH POSSIBLE EXECUTION OF A MINOR

Classified By: Ambassador Thomas C. Krajewski for Reasons 1.4 (b) and (d).

1. (U) Summary. On May 2, President Saleh suspended the death sentence of murder defendant Amina Ali Abdallah al-Tuhaif. The suspension was a direct result of international and local pressure to revisit the case due to questions on whether or not Al-Tuhaif committed murder when she was a minor. End Summary.

2. (U) On May 2, Saleh temporarily commuted the death sentence of Amina Ali Abdallah al-Tuhaif and requested a full case review by the ROYG Minister of Justice, Dr. Adnan Omar al-Jafri. Amina was convicted of the January 1999 murder of her husband, Hezam Hassan Hezam Qabail. Recently, the case garnered some local and international publicity as questions arose surrounding Amina's age at the time of the crime and an allegation that she was raped in prison.

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Facts and Case History  
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3. (U) Misinformation, propagated by the press, rumor and a poorly maintained 15-page handwritten court record, has muddled the facts surrounding the case. According to the court record provided by European Union (EU) Delegation to the Republic of Yemen Senior Program Monitor, Mary Horves, the case revolves around a suspected affair that Amina had with her and her husband's cousin, Muhammad Ali Yahia Qabail. It is alleged that one night in January 1998, for reasons that are unclear, Amina let Muhammed into her home. There is no confirmed account of what transpired in the home but the next day Amina's husband, who was evidently strangled to death, was found in a well. Amina and her cousin were subsequently arrested. Both confessed to the crime.

4. (U) During Amina's trial the prosecution asserted that she helped her cousin plan Hezam's murder and drag his body into the well. The primary evidence against Amina was the confession, which she says was given under torture. (Note: It appears from the court record that this was the only evidence presented. In Yemen almost 90% of convictions are based solely on confessions. End Note). According to Hovers, there are some questionable facts surrounding the case that were never presented in trial. For example, both defendants gave very different accounts of that evening's events. Furthermore, there are some witnesses from Amina's village who told authorities that Hezam was actually killed over a land dispute.

5. (U) Procedurally, Amina's case was tried in the northern governorate of Mahawet in May 1999. (Note: Mahawet lacks any solid rule of law infrastructure. As such, it is unlikely that she received any sort of sound due process even by Yemeni standards. End Note). Her conviction was upheld by the Sanaa Appellate Court in July, 2001 and the Supreme Court in July, 2002. Per Yemeni law, Saleh ratified the sentence shortly afterwards.

6. (U) In 2002, minutes before her execution, Amina's sentence was held in abeyance when authorities physically noticed that she was pregnant. Amina, through her attorney, Shada Nasir, claims that the pregnancy was the result of being raped in prison. (Note: Prosecutors refuted the claim pointing out the Amina likely conceived when she escaped shortly before her execution. End note). Until now Amina has refused to identify her rapist. Authorities immediately transferred Amina to the Sanaa Central Prison where she delivered and has been caring for her son. Since her most recent reprieve, no interlocutor, including Nasir, knows the cases' legal status. There are also unsubstantiated reports that Saleh has contacted the victim's family to settle the case.

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How Old is Amina?  
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7. (U) Controversy over the case revolves primarily around Amina's attorneys' claims that she was 14 years old at the time of the murder. This would preclude her from the death penalty under Article 31 of the Yemeni Penal Code, which forbids executing anyone for a crime that they committed when they were under the age of 18. In September 2000 a ROYG Ministry of Health (MOH) dentist examined Amina to determine

her age. The examination put Amina at 17-18 years old in 2000, between 15-16 years old at the time of the crime and between 12-13 years old at the time of her marriage. Some witnesses from Amina's village contend that Amina was in fact 11 years old at the time of her marriage, thus placing her at around 14 years old at the time of the crime. Despite the examination results the sentence was not commuted.

18. (SBU) The court determined that Amina was 18 years old in 1998. Sharaf ad-Din Mahbashi, Deputy Attorney General in charge of death penalty case review, explained to poloff that the MOH dentist's examination was flawed and he had no doubt that Amina was in fact 18 years old at the time of the crime. Mahbashi also alluded to the fact that the court "may have" benchmarked Amina's first menstruation in 1995 to age 15 thus placing her at 18 years of age at the time of the crime. There are no records to substantiate Amina's age.

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International Attention  
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19. (C) In late April, after Phoebe Kraus, a representative of the Italian NGO project "Action for Freedom" that is helping in Amina's defense, released information regarding the case to local and international press, EU embassies and international NGOs began to take action. On Wednesday April 27, the Dutch Ambassador, in his capacity as the EU Acting Charge d'Affairs (CDA), demarched the MFA against the death penalty in Amina's case. According to Horves, all EU heads of mission ratified the demarche and are opposed to the execution. Amnesty International (AI) has also taken up the case. On May 7, Horves called poloff requesting a meeting between Ambassador and the EU CDA, Raus Dreyer, to discuss the EU stance on the case.

10. (C) Several local NGOs, such as HOOD (the National Organization for Defending Rights and Freedoms), local and international newspapers (from as far as New Zealand) and some blogs have begun to cover the case. According to Kraus, this publicity upset Minister of Human Rights Amat al-Alim Soswa, who has been working behind the scenes to resolve the issue. However, Nasser Arrabyee, Special Assistant Soswa, confided to poloff that Soswa felt that pressure was "helpful" in having the case reviewed.

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Comment:  
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11. (C) Like any death penalty case in the U.S., the allegations in this case are difficult to ascertain. There are several questionable factors surrounding Amina's case. The fact that Amina was tried in a governorate where the rule of law is mostly absent is cause for concern. Amina's allegation of torture is also likely true. Amina's allegation of rape, however, is more questionable since it is possible that she was not in custody when she conceived. Soswa's behind the scenes mediation and international attention are the reasons that Saleh so readily stayed the execution and called for a review of the case. Post expects that the ROYG will continue to attempt to resolve this case while considering the consequences of negative publicity linked to a possible re-trial and the traditional right of the victim's family to exact revenge. Ambassador will meet with Soswa and the EU to further inquire on the case and post will continue to monitor developments. End Comment  
Krajeski